

### **REMARKS**

Applicants have amended claims 1-2, 15, 26-28, 40, and 56, and have canceled claims 51 and 54 during prosecution of this patent application. Applicants are not conceding in this patent application that said amended and canceled claims are not patentable over the art cited by the Examiner, since the claim amendments and cancellations are only for facilitating expeditious prosecution of this patent application. Applicants respectfully reserve the right to pursue said amended and canceled claims, and other claims, in one or more continuations and/or divisional patent applications.

The Examiner objected to drawings.

The Examiner objected to the specification.

The Examiner objected to claim 56.

The Examiner rejected claims 51 and 54 under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the enablement requirement.

The Examiner rejected claims 1-4, 6-9, 11-14, 16-20, 23, 26-29, 31-34, 36-39, 41-45, 48, 52-53, and 55-56 under 35 U.S.C. § 102(a) as allegedly being anticipated by Stone (US PGPub 2003/0036886).

The Examiner rejected claims 5, 10, 21, 22, 24, 25, 30, 35, 46, 47, 49 and 50 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Stone (US PGPub 2003/0036886).

The Examiner rejected claims 15 and 40 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Stone (US PGPub 2003/0036886) as applied to claims 1 and 26 above, in view of Hickman et al. (US 6,523,036).

The Examiner rejected claims 51 and 54 under 35 U.S.C. § 103(a) as allegedly being

unpatentable over Stone (US PGPub 2003/0036886) as applied to claims 1 and 26 above, and in view of Douglas et al. (US 5,652,908).

Applicants respectfully traverse the specification objection, drawing objection, objection to claim 56, § 112, § 102 and § 103 rejections with the following arguments.

### **Drawings Objection**

The Examiner objected to drawings. The Examiner argues: "The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: S1 and S2 (pg. 8 line(s) 1-7)."

In response, Applicants respectfully contend that the specification, page 8, lines 1-7 does not state that symbols S1 and S2 appear in any Figure, and therefore symbols S1 and S2 should not appear in any Figure. There is no rule in the MPEP that requires a symbol mentioned in the specification to appear in a drawing if the specification does not indicate that the symbol appears in a drawing. The symbols S1 and S2 are used as portions of text that explains the meaning of two clusters being directly connected to each other.

Accordingly, Applicants respectfully request that the objection to the drawings be withdrawn.

### **Specification Objection**

The Examiner objected to the specification. The Examiner argues: "The disclosure is objected to because of the following informalities: pg. 9 line 20, should read, "...software that is **linked linked** to the load ...". "

In response, Applicants have amended the specification in accordance with the Examiner's suggestion.

**Claim Objection**

The examiner argues: "Claim 56 is objected to because of the following informalities:  
should refer claim 26 and not claim 1."

In response, Applicants have amended claim 56 to depend from claim 26 as the Examiner suggests.

**35 U.S.C. § 112, First Paragraph**

The Examiner rejected claims 51 and 54 under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the enablement requirement.

Since claims 51 and 54 have been canceled, the rejection of claims 51 and 54 35 U.S.C. § 112, first paragraph is moot.

35 U.S.C. § 102(a)

The Examiner rejected claims 1-4, 6-9, 11-14, 16-20, 23, 26-29, 31-34, 36-39, 41-45, 48, 52-53, and 55-56 under 35 U.S.C. § 102(a) as allegedly being anticipated by Stone (US PGPub 2003/0036886).

Claims 1-4, 6-9, 11-14, 16-20, 23, 26-7, 41-45, 48, 52-53, and 55-56

Applicants respectfully contend that claims 1 and 26 are not unpatentable over DeLima *et al.* and further in view of Stone, because DeLima *et al.* and further in view of Stone does not teach or suggest each and every feature of claims 1 and 26.

Applicants respectfully contend that Stone does not anticipate claims 1 and 26, because Stone does not teach each and every feature of claims 1 and 26.

As a first example of why Stone does not anticipate claims 1 and 26, Stone does not teach the feature: “each cluster of the network comprising a plurality of **identical** servers” (emphasis added).

The Examiner argues: “Stone discloses ... each cluster of the network comprising a plurality of identical servers (§0038 line(s) 2-5, teaches that the servers in the clusters are identical because if one of the servers, in the clusters, fails then the other servers in the cluster can continue to keep the overall service available.)”.

In response, Applicants respectfully assert that it is not inherent that if each server in a cluster has the ability to keep the overall service available, the servers in the cluster are identical. The word “identical” has the following meaning: “the very same” (Webster New World

Dictionary 669 (3d ed. 1988). Applicants assert that two servers that are constructed differently (and thus are not identical) could nonetheless have the characteristic of being able to keep the overall service available.

Therefore, Stone does not teach the preceding feature of claims 1 and 26.

As a second example of why Stone does not anticipate claims 1 and 26, Stone does not teach the feature: “a control server adapted to monitor an operational status of said communication link, said operational status of the communication link being that said communication link is operational or non-operational, said control server being **directly linked** to at least two servers in each cluster via a communication channel between the control server and the at least two servers in each cluster” (emphasis added).

The Examiner argues in conjunction with claim 1: “Stone discloses ... (¶0078, teaches the control server (Node Monitor/Service Agent) that monitors the operational status of the communication link. Since both the node monitor and service agent can monitor the status, it is obvious to state that if the node monitor(s) either didn't exist or fails then the service agent would be directly connected to at least two servers in each cluster, as shown in Fig. 12.).”

In response, the Examiner is using an obviousness-type argument, which cannot be used to support a rejection under 35 U.S.C. § 102(a). Under 35 U.S.C. § 102(a), only an explicit teaching or an inherent teaching can be used to reject a claim.

Applicants respectfully assert that Stone, ¶0078 teaches that the node monitor can monitor the status. However, Stone, ¶0078 does not explicitly or inherently teach that the service agent can monitor the status. Stone, ¶0078 teaches that the service agent can generate a node



failure event 65, but does not explicitly teach that the service agent can monitor the status.

Moreover, Stone, ¶0078 teaches not inherently teach that the service agent can monitor the status, because the service agent can generate a node failure event 65 as a result of the node monitor having determined the existence of a node a failure by having monitored the status, as evidenced by Stone, ¶0044 which recites: “When an entire node fails, service agent 27 is notified by node monitor 28 even when the local agent is unable to communicate with service agent 27 due to the failed network connection or crashed server or hardware”.

Furthermore, Stone, ¶0078 is not discussing the service agent 97 of FIG. 12, but is rather discussing the service agents 27, 37, and 47 of FIG. 2. Applicants note that FIG. 2 shows that service agents 27, 37, and 47 are local service agents directly connected to only the servers in their respective cluster and not directly connected to servers in any other cluster. Stone, ¶0099 states explicitly FIG. 12 represents an alternative embodiment and is thus not the embodiment described in Stone, ¶0078. The alternative embodiment of FIG. 12 is not described in Stone, ¶0078.

The Examiner further argues in conjunction with claim 26: “Stone... (¶0044, teaches the control server (Node Monitor) that monitors the operational status of the communication link), said control server being directly linked to at least one servers in each cluster via a communication channel between the control server and the at least one servers in each cluster (Fig. 12, shown below, teaches the control server (Node Monitor) being directly connected to at least one server in each cluster).”

In response, Applicants assert claims 1 and 26 require that the control monitor be directly connected to each server of at least two servers in each cluster, which is not satisfied by any of

the three node monitors (28, 38, 48) in Stone, FIG. 12. For example, node monitor 28 is not directly linked to at least two servers in cluster 30 because node monitor 28 is directly linked to server 31 but is not directly linked to servers 32 and 33 in cluster 30, and node monitor 28 is not directly linked to at least two servers in cluster 40 because node monitor 28 is directly linked to server 41 but is not directly linked to server 42 in cluster 40. Similar considerations apply to node monitors 38 and 48.

Therefore, Stone does not teach the preceding feature of claims 1 and 26.

Based on the preceding arguments, Applicants respectfully maintain that Stone does not anticipate claims 1 and 26, and that claims 1 and 26 are in condition for allowance. Since claims 2-4, 6-9, 11-14, 16-20, 23, 52 and 53 depend from claim 1, Applicants contend that claims 2-4, 6-9, 11-14, 16-20, 23, 52 and 53 are likewise in condition for allowance. Since claims 27, 41-45, 48, 55 and 56 depend from claim 26, Applicants contend that claims 27, 41-45, 48, 55 and 56 are likewise in condition for allowance.

#### Claims 28, 31-34, and 36-39

Applicants respectfully contend that Stone does not anticipate claim 28, because Stone does not teach each and every feature of claim 28.

The Examiner does not explicitly discuss the rejection of claim 28. However, the Examiner's arguments for claim 26 appear to cover the limitations of claim 28. Therefore, Applicants will analyze the Examiner's arguments for claim 26 as also representing the Examiner's arguments for claim 28.

As a first example of why Stone does not anticipate claim 28, Stone does not teach the feature: “each cluster of the network comprising a plurality of **identical** servers” (emphasis added).

The Examiner argues: “Stone discloses ... each cluster of the network comprising a plurality of identical servers (§0038 line(s) 2-5, teaches that the servers in the clusters are identical because if one of the servers, in the clusters, fails then the other servers in the cluster can continue to keep the overall service available.)”.

In response, Applicants respectfully assert that it is not inherent that if each server in a cluster has the ability to keep the overall service available, the servers in the cluster are identical. The word “identical” has the following meaning: “the very same” (Webster New World Dictionary 669 (3d ed. 1988)). Applicants assert that two servers that are constructed differently (and thus are not identical) could nonetheless have the characteristic of being able to keep the overall service available.

Therefore, Stone does not teach the preceding feature of claim 28.

As a second example of why Stone does not anticipate claim 28, Stone does not teach the feature: “monitoring an operational status of a first communication link between a first server of the first cluster and a second server of the second cluster, said monitoring being performed by the control server, said monitoring including sending a query signal to the first server, said query signal requesting the first server to send a response signal to the control server indicating the status of the first communication link, said operational status of the first communication link being that said first communication link is operational or non-operational”.

The Examiner argues: “Stone discloses ... (¶0044, teaches that the node monitor is able to test links from other networks other than it's specific cluster to determine the operational status. Likewise, ¶0078, teach the node monitor testing the communication links by using the conventional method of pinging. Therefore, when using this method a reply is requested and returned.).”

In response, Applicants respectfully contend that the Examiner has incorrectly described Stone, ¶0044 which recites: “Node monitor 28 monitors the nodes for web servers 21, 22, 23, and can also monitor any **sub-networks associated with these nodes**” (emphasis added). In other words, Stone, ¶0044 does not teach that a node monitor is able to monitor an operational status of a communication link between servers different clusters as required by claim 28. Instead, Stone, ¶0044 teaches that a node monitor is able to monitor an operational status of sub-networks of servers within the cluster that the node monitor is associated with.

Furthermore, Stone, ¶0078 teaches that the node monitor can periodically ping a node, which would enable the node monitor to monitor an operational status of the node that is pinged. However, Stone, ¶0078 does not teach that the node monitor can monitor the operational status of a communication link between servers of different clusters as required by claim 28.

Therefore, Stone does not teach the preceding feature of claim 28.

Based on the preceding arguments, Applicants respectfully maintain that Stone does not anticipate claim 28, and that claim 28 is in condition for allowance. Since claims 29, 31-34 and 36-39 depend from claim 28, Applicants contend that claims 29, 31-34 and 36-39 are likewise in condition for allowance.

### 35 U.S.C. § 103(a)

#### Claims 5, 10, 21, 22, 24, 25, 30, 35, 46, 47, 49 and 50

The Examiner rejected claims 5, 10, 21, 22, 24, 25, 30, 35, 46, 47, 49 and 50 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Stone (US PGPub 2003/0036886).

Since claims 5, 10, 21, 22, 24, and 25 depend from claim 1, and since Applicants have argued *supra* that claim 1 is not anticipated by Stone, Applicants maintain that claims 5, 10, 21, 22, 24, and 25 are not unpatentable over Stone under 35 U.S.C. §103(a). Since claims 30 and 55 depend from claim 28, and since Applicants have argued *supra* that claim 28 is not anticipated by Stone, Applicants maintain that claims 30 and 35 are not unpatentable over Stone under 35 U.S.C. §103(a). Since claims 46, 47, 49 and 50 depend from claim 26, and since Applicants have argued *supra* that claim 26 is not anticipated by Stone, Applicants maintain that claims 46, 47, 49 and 50 are not unpatentable over Stone under 35 U.S.C. §103(a).

#### Claims 15 and 40

The Examiner rejected claims 15 and 40 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Stone (US PGPub 2003/0036886) as applied to claims 1 and 26 above, in view of Hickman et al. (US 6,523,036).

Since claim 15 depends from claim 1 which Applicants have argued *supra* to be not anticipated by Stone, Applicants maintain that claim 15 is not unpatentable over Stone in view of Hickman under 35 U.S.C. §103(a).

Since claim 40 depends from claim 26 which Applicants have argued *supra* to be not

anticipated by Stone, Applicants maintain that claim 40 is not unpatentable over Stone in view of Hickman under 35 U.S.C. §103(a)

Claims 51 and 54

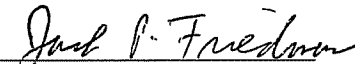
The Examiner rejected claims 51 and 54 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Stone (US PGPub 2003/0036886) as applied to claims 1 and 26 above, and in view of Douglas et al. (US 5,652,908).

Since claims 51 and 54 have been canceled, the rejection of claims 51 and 54 35 U.S.C. § 103(a) is moot.

### CONCLUSION

Based on the preceding arguments, Applicants respectfully believe that all pending claims and the entire application meet the acceptance criteria for allowance and therefore request favorable action. If the Examiner believes that anything further would be helpful to place the application in better condition for allowance, Applicants invites the Examiner to contact Applicants' representative at the telephone number listed below. The Director is hereby authorized to charge and/or credit Deposit Account 09-0457 (IBM).

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